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September 13, 2012

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

*Re: NCTA Petition for Declaratory Ruling With Respect to Section 652 of the
Communications Act Concerning Cable Acquisitions of Competitive Local
Exchange Carriers, WC Docket No. 11-118*

Dear Ms Dortch:

On behalf of Montgomery County, Maryland, we submit this *ex parte* letter to make the following points in opposition to the above-referenced petition:

- The County supports the Comments and Reply Comments of the National Association of Telecommunications Officers and Advisors, filed August 22, 2011 and September 21, 2011 respectively.
- The petition for declaratory ruling should be denied. Section 652(b) applies to “any local exchange carrier” which unambiguously includes CLECs as well as ILECs. Arguments to the contrary are unpersuasive, and the Commission should not declare otherwise. Local review provides a useful role to ensure any acquisition will actually further competition in the local market. Local Franchise Authorities (LFA) have the best information on local market conditions and potential effect of an acquisition on local competition. Montgomery County is not opposed, in principle, to cable operators buying CLECs, but the County is opposed to eliminating LFA review of those transactions. The statute, enacted in 1996, explicitly recognized the importance of LFA review in every waiver of the cross-ownership prohibition. Section 652(d)(6)(B). Yet the petition largely relies on the experience of Comcast in a single merger transaction (CIMCO) to support the alternative claim that the whole industry needs broad relief *now* in the form of a declaratory ruling interpreting and limiting the LFA approval requirement. The petitioner provides no compelling arguments in support of this alleged need, and it is questionable whether the Commission has authority to

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impose generic standards on the exercise of LFA authority under the statute. In these circumstances, the Commission should not act.

- The petition also claims that CLEC-cable mergers are “almost always strongly pro-competitive” particularly with respect to commercial customers.¹ However, the petitioner’s claim that CLEC-cable combinations are always pro-competitive is not supported by the evidence. That view of the marketplace appears deliberately vague and out-of-step with recent market developments. In early 2010 in its *CIMCO* decision, the Commission did find that that specific proposed transaction was “unlikely to result in anticompetitive effects because, among other reasons, Comcast and CIMCO have focused their voice services on different market segments and for the most part do not compete with each other.”² But one cannot generalize about the state of competition in all local markets from a single transaction. More importantly, commercial marketplace conditions are changing rapidly and have already changed significantly since 2010. Commenters filing in 2011 in this docket pointed out that the commercial services revenues of cable companies have grown exponentially in a few short years, with “industry-wide, cable companies’ commercial services revenues—voice, data and video—[] projected to grow from \$5 billion in 2010 to \$17 billion in 2014—even without CLEC acquisitions.”³ With this level of growth in commercial services revenues by cable companies, any new cable-CLEC merger might reduce competition by merging two competitors rather than “injecting” competition in a local marketplace as the petitioner claims. And the impact on the local *residential* marketplace of any cable-CLEC merger can only serve to lessen competition for residential customers as the cable companies already are dominant wireline providers in their local residential markets. Thus, a declaratory order will not necessarily promote competitive market conditions at all, and could in fact facilitate a substantial *decrease* in competition.

For these reasons, Montgomery County believes the relief sought in the petition is unwarranted and urges the Commission to deny the request.

Sincerely,



Nicholas P. Miller
of BEST BEST & KRIEGER LLP

¹ These mergers in NCTA’s Petition for Declaratory Ruling at p. 2.

² In re Applications Filed by Comcast Phone LLC, 25 FCC Rcd 3401, 3410 (F.C.C. 2010).

³ American Cable Association Comments at p. 3. See also Reply Comments of US Telecom at p.4-6.



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